Supreme Court, U.S.
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No. 85-1421

In The

Supreme Court of the United States

October Term, 1985

TERRAIN ENTERPRISES, INC.,

Petitioner,

vs.

THE WESTERN CASUALTY & SURETY COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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Respondent respectfully requests that this Court deny the petition for writ of certiorari.

CASE HISTORY

The present action is a diversity case, in which petitioner alleged that the respondent, The Western Casualty & Surety Company, tortiously breached a performance bond issued in connection with a construction project. Prior to trial, the dispute between the petitioner and respondent was settled by petitioner's former counsel for $65,000. The United States Court of Appeals for the Fifth Circuit, in an opinion written by Chief Judge Charles Clark of Mississippi, applying Mississippi law on apparent authority and settlement, reversed the District Court's finding that the settlement agreement was not binding and remanded the case to the District Court with instructions to enforce the settlement. The Court of Appeals also noted that petitioner's excess costs, the proper measure of petitioner's actual damages, were only $48,677.46 and that punitive damages were not recoverable on the facts of the case under Mississippi law. Had the Court of Appeals not enforced the settlement, petitioner's recovery would have been limited to $48,672.46 rather than $65,000.00.

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CERTIORARI SHOULD NOT BE GRANTED UNDER RULE 17

The only reviewable issue presented in this diversity case is whether the Court of Appeals misapplied Mississippi law governing settlements. The decision of the Court of Appeals does not:

(1) conflict with a decision of another court of appeals,

(2) conflict with a decision of this Court,

(3) depart from the accepted and usual course of judicial proceedings,

(4) present an important question of federal law.

The opinion of the Court of Appeals was based upon factual evidence unique to this case and the proper application of Mississippi law.

Accordingly, certiorari is inappropriate under Rule 17 and should not be granted.

Respectfully submitted,

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